# BEFORE THE PHYSICIAN ASSISTANT BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1E-2010-209152

KEVIN YIM, PA-C P.O. Box 362 Chino Hills, CA 91711 Physician Assistant No. PA 17695 OAH No. 2013020063

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Physician Assistant Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on \_\_\_\_\_ February 27, 2014

It is so ORDERED

February 20, 2014

FOR THE PHYSICIAN ASSISTANT BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9 | PHYSICIAN ASSISTANT<br>DEPARTMENT OF O   | RE THE<br>BOARD OF CALIFORNIA<br>CONSUMER AFFAIRS<br>CALIFORNIA |
|---|--|---|
| 11  | In the Matter of the Accusation Against:   | Case No. 1E-2010-209152   |
| 12  | KEVIN YIM, PA-C  | OAH No. 2013020063  |
| 13  | P.O. Box 362<br>Chino Hills, CA 91711  | STIPULATED SURRENDER OF   |
| 14  | Physician Assistant No. PA 17695   | LICENSE AND ORDER   |
| 15  | Respondent.  |   |
| 16  |  |   |
| 17  | IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-                        |   |
| 18  | entitled proceedings that the following matters are true:  |   |
| 19  | <u>PARTIES</u>   |   |
| 20  | 1. Glenn L. Mitchell, Jr. (Complainant) is the Executive Officer of the Physician                  |   |
| 21  | Assistant Board. He brought this action solely in his official capacity and is represented in this |   |
| 22  | matter by Kamala D. Harris, Attorney General of the State of California, by Cindy M. Lopez,        |   |
| 23  | Deputy Attorney General.   |   |
| 24  | 2. Kevin Yim, PA-C (Respondent) is re  | epresented in this proceeding by attorney Peter R               |
| 25  | Osinoff, Esq., whose address is 3699 Wilshire Blvd., Tenth Floor, Los Angeles, CA 90010-271        |   |
| 26  | 3. On or about November 8, 2004, the Physician Assistant Board issued Physician                    |   |
| 27  | Assistant License No. PA 17695 to KEVIN YIM, PA-C (Respondent). His license will expire            |   |
| 28  | May 31, 2014, unless renewed.  |   |

#### JURISDICTION

4. Amended Accusation No. 1E-2010-209152 was filed before the Physician Assistant Board of California (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 31, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Amended Accusation No. 1E-2010-209152 is attached as Exhibit A and incorporated by reference.

#### ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Amended Accusation No. 1E-2010-209152. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## <u>CULPABILITY</u>

- 8. Respondent admits he was convicted of three counts of sexual battery and required to register as a sex offender, as alleged in Amended Accusation No. 1E-2010-209152, and agrees that cause exists for discipline and hereby surrenders his Physician Assistant License No. PA 17695 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician Assistant without further process.

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#### CONTINGENCY

- 10. This stipulation shall be subject to approval by the Physician Assistant Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Physician Assistant Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

#### **ORDER**

IT IS HEREBY ORDERED that Physician Assistant License No. PA 17695, issued to Respondent Kevin Yim, PA-C, is surrendered and accepted by the Physician Assistant Board of California.

- 1. The surrender of Respondent's Physician Assistant license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Physician Assistant Board.
- Respondent shall lose all rights and privileges as a physician assistant in California as 2. of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

- 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and causes for discipline I and II as alleged in Amended Accusation No. 1E-2010-209152 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, causes for discipline I and II as alleged in Amended Accusation No. 1E-2010-209152 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

## **ACCEPTANCE**

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician Assistant License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physician Assistant Board of California.

DATED: 12-15-13

KEVIN/YIM, PA-C
Respondent

I have read and fully discussed with Respondent KEVIN YIM, PA-C, the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 12/23/13

PETER R. OSINOFF, ESQ. Attorney for Respondent

# **ENDORSEMENT** The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Physician Assistant Board of California of the Department of Consumer Affairs. Dated: 2.12.19 Respectfully submitted, KAMALA D. HARRIS Attorney General of California ROBERT MCKIM BELL Supervising Deputy Attorney General ind motor CINDY M. LOPEZ Deputy Attorney General Attorneys for Complainant LA2012606393 61144109.docx

# **EXHIBITA**

Amended Accusation No. 1E-2010-209152

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16                               | PHYSICIAN ASS<br>MEDICAL BOARI<br>DEPARTMENT OF C   | STATE OF CALIFORNIA MEDICAL BOARD OF CALIFORNIA SACRAMENTO October 31, 20 13 BY Ion Michola ANALYST  RE THE SISTANT BOARD OF CALIFORNIA CONSUMER AFFAIRS CALIFORNIA  Case No. 1E-2010-209152  FIRST AMENDED ACCUSATION  |  |
|--|---|---|--|
| 17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26<br>27<br>28 | 1. Glenn L. Mitchell, Jr. (Complainant) his official capacity as the Executive Officer of t Board").  2. On or about November 8, 2004, the number PA 17695 to Kevin Yim, PA-C ("Respo at all times relevant to the charges brought herein | Respondent.  PARTIES  Glenn L. Mitchell, Jr. (Complainant) brings this First Amended Accusation solely in al capacity as the Executive Officer of the California Physician Assistant Board ("the  On or about November 8, 2004, the Committee issued Physician Assistant License A 17695 to Kevin Yim, PA-C ("Respondent"). That license was in full force and effect as relevant to the charges brought herein and will expire on May 31, 2014, unless |  |

renewed. Pursuant to an Interim Suspension Order, Respondent's license was restricted to only treating male patients beginning November 28, 2012.

## JURISDICTION

- 3. This First Amended Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.
- 4. Section 3527 of the Code provides that the Board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician's assistant certificate for unprofessional conduct, including a violation of the Medical Practice Act.
- 5. Section 726 of the Code provide provides in pertinent part that "The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3."
- 6. Section 2234 of the Code provides in pertinent part that the board shall take action against any licensee who is charged with unprofessional conduct pursuant to Code section 2234, subdivision (b), gross negligence.
- 7. Section 2232 states in pertinent part: "(a) Except as provided in subdivisions (b), (c), and (d), the board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code."
- 8. Title 16, California Code of Regulation section 1399.523.5 provides in pertinent part that if an individual is required to register as a sex offender pursuant to Penal Code section 290, the board shall promptly revoke the license.

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| 1  | CAUSES FOR DISCIPLINE  |  |  |
| 2  | I  |  |  |
| 3  | CAUSE FOR MANDATORY REVOCATION OF LICENSE  |  |  |
| 4  | (Registration as a Sex Offender)   |  |  |
| 5  | 9. Respondent's Physician Assistant License, No. PA 17695 is subject to mandatory                    |  |  |
| 6  | revocation under code section 3527, 2232, and Title 16, California Code of Regulations Section,      |  |  |
| 7  | 1399.523.5 in that he has been required to register as a sex offender pursuant to the provisions of  |  |  |
| 8  | section 290 of the Penal Code. The circumstances are as follows:                                     |  |  |
| 9  | A. On July 31, 2013, in the case of The People of the State of California v. Kevin                   |  |  |
| 0  | Yim, Los Angeles County Superior Court case number KA099397, Respondent was ordered, as              |  |  |
| 1  | part of his sentence, to register as a sex offender pursuant to the provisions of Penal Code section |  |  |
| 2  | 290.   |  |  |
| 3  | B. As a result of his being ordered to register as a sex offender, Respondent's Physician            |  |  |
| 4  | Assistant License No. PA 17695 is subject to mandatory revocation pursuant to the provisions of      |  |  |
| 5  | Business and Professions Code Section 2232.  |  |  |
| 6  | II   |  |  |
| 7  | (Conviction of a Crime)  |  |  |
| 18 | 10. Respondent is subject to disciplinary action under code sections 3527, 2236, and                 |  |  |
| 9  | Title 16, California Code of Regulations section 1399.523.5 for conviction of a crime. The           |  |  |
| 20 | circumstances are as follows:  |  |  |
| 21 | A. On September 14, 2012, in the case of The People of the State of California v. Kevin              |  |  |
| 22 | Yim, Los Angeles County Superior Court case number KA099397, Respondent was charged with             |  |  |
| 23 | four counts of sexual battery, all violations of the Penal Code.                                     |  |  |
| 24 | B. On June 18, 2013, Respondent pled nolo contendere to three counts of sexual battery               |  |  |
| 25 | on an unconscious person under the guise of a professional purpose. As a result of his plea, he      |  |  |
| 26 | now stands convicted of a sexual offense which requires him to register as a sex offender.           |  |  |
| 27 | C. On July 31, 2013, Respondent was sentenced to one year in county jail, five years                 |  |  |
| 28 | probation, and was required to register as a sex offender pursuant to Penal Code section 290.        |  |  |
|    |  |  |  |

# (Sexual Misconduct with Patients Yvonne P., Monica D., Lauren R., & Lynn K.)

- 11. Respondent is subject to disciplinary action under section 726 of the Code for committing acts of sexual abuse, misconduct, or relations with patients in that he performed inappropriate physical examinations of four female patients, apparently for his own sexual gratification. The circumstances are as follows:
- A. Patient Yvonne P. On August 31, 2009, patient Yvonne P. went to the Pomona Valley Health Center Urgent Care Facility ("PVHC") because earlier that week she fell, landing on her right shoulder. She was put in an examination room and a short while later, Respondent came into to examine her. They were alone; no chaperone was present. Yvonne P. was told to take off her bra and underwear and to put on a gown. Respondent touched her back and shoulder and asked if she still had pain. She said yes. Then he touched her breasts by pressing on her right breast, and did not explain why he was doing this. Yvonne P. told him loudly that the pain was not there.
- B. Prior to this encounter, Yvonne P. had received yearly breast exams by her gynecologist that were dissimilar to how Respondent touched her breasts. When Yvonne P. got home, she told her husband. Her husband confirmed that his wife was very upset when she got home and told him about how she had been treated.
- C. Patient Monica D. On May 22, 2010, patient Monica D. went to PVHC for an employment physical. There was no chaperone present. The medical assistant told Monica D. to get in a gown, leaving on her bra and underwear. Once Respondent came into the exam room, while Monica D was lying on the exam table, he took one breast at a time and began pressing on them. He asked if she had tenderness and she said yes. Then Respondent asked if he could "check this out" so he grabbed her bra and raised it completely over both breasts. He pressed on her breasts, touched her back, asked her to breathe in, and then asked her to bend over and touch her toes. He started pressing on her stomach, and went to the top of her underwear. He asked if she had any pain in that area, but the patient said no since she was afraid he would ask to see her vagina. Respondent ended the exam by commenting on her piercing.

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- D. Patient Monica D. asked her co-workers if they had their breasts examined during their employment physicals and they said no.
- E. Patient Lauren R. On August 9, 2010, patient Lauren R. went to PVHC in Claremont because she had a sore throat. This was her first and only visit to the center. When she arrived there, the medical assistant told her to keep her clothing on. Respondent came into the exam room and asked why she was there; no one else was in the room. Lauren R. told him she had a sore threat and he told the patient she might have strep. He swabbed her throat, and asked if she has been tested for breast cancer and if she examined her breasts. She said no to both questions.
- F. Lauren R. asked Respondent if he thought it was necessary to do a breast exam for a sore throat and he said yes. He left the room and told her to undress from the waist up. When he came back in, while sitting in a chair, Respondent used both hands and began squeezing and gripping one breast and did the same to the other breast. He pinched and twisted her nipples until it hurt. This was unlike any other breast exam Lauren R. had ever gotten from her gynecologist.
- G. When the patient left the clinic, she immediately called her best friend Emily and related what had happened. The friend encouraged Lauren R. to report the incident to the police, and she did.
- H. Patient Lynn K. On March 15, 2011, Lynn K. went to PVHC to undergo a physical exam as part of her pre-employment process. The medical assistant told her to leave on her bra and underwear and put on a gown. During her visit, Respondent came into the exam room and there was no chaperone present. Somehow they got on the topic of whether she had pain in her breast and she said no. He then took both hands and began gripping and squeezing one breast at a time. Then he asked her to take off her bra and gown so he could see how her breasts hung. After that, the discussion centered on her breasts.
- I. Respondent asked when she had her breast augmentation, told her she had nice breasts and she would look good in a bikini. Respondent also commented on her playboy bunny

| 1  | tattoo. Respondent stood in front of the patient and told her to bend over and touch her toes while |  |  |
|----|---|--|--|
| 2  | she was not wearing a bra or gown.  |  |  |
| 3  | J. Patient Lynn K. felt "violated" and that Respondent "took advantage" of her.                     |  |  |
| 4  | When Lynn K. got home, she told her boyfriend Fernando V. what happened. Mr. V                      |  |  |
| 5  | confirmed this.   |  |  |
| 6  | IV  |  |  |
| 7  | (Gross Negligence)  |  |  |
| 8  | 12. Respondent is subject to disciplinary action under section 2234, subdivision (b) in             |  |  |
| 9  | that he was grossly negligent in performing inappropriate examinations on the four patients listed  |  |  |
| 10 | in the Third Cause for Discipline. The circumstances are as follows:                                |  |  |
| 11 | A. The facts and allegations set forth in paragraph 11A-J above are incorporated                    |  |  |
| 12 | by reference as if fully set forth.   |  |  |
| 13 | B. Respondent performed breast exams on all four patients when not medically                        |  |  |
| 14 | indicated.  |  |  |
| 15 | C. Respondent did not seek or obtain prior consent to perform breast exams on any                   |  |  |
| 16 | of the four patients.   |  |  |
| 17 | D. During employment examinations, Respondent performed 'breast exams' on                           |  |  |
| 18 | patients Monica D. and Lynn K., however, an employment examination does not include a breast        |  |  |
| 19 | exam.   |  |  |
| 20 |   |  |  |
| 21 | <u>PRAYER</u>   |  |  |
| 22 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,               |  |  |
| 23 | and that following the hearing, the Physician Assistant Board issue a decision:                     |  |  |
| 24 | 1. Revoking or suspending Physician Assistant License Number PA 17695, issued to                    |  |  |
| 25 | Kevin Yim, PA-C;  |  |  |
| 26 | 2. Ordering him to pay the Physician Assistant Board the reasonable costs of the                    |  |  |
| 27 | investigation and enforcement of this case, pursuant to Business and Professions Code section       |  |  |
| 28 | 125.3; and,   |  |  |

| 1        | 3. Taking such other and further action as deemed necessary and proper. |  |
|----------|---|--|
| 2        |   |  |
| 3        | ·   |  |
| 4        | DATED October 31, 2013  |  |
| 5        | GI <sub>0</sub>   | enn L. Mitchell, Jr.                           |
| 6        | Ph  | ecutive Officer<br>ysician Assistant Board     |
| 7        | Sta   | partment of Consumer Affairs ate of California |
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